

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

In the matter of:

ACO-000282

Date Entered: 5-18-16

Empire Iron Mining Partnership
Empire Mine Road
Palmer, Michigan 49871

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges Empire Iron Mining Partnership (Empire), which owns the Empire Mine located at Empire Mine Road, Palmer, Michigan that is operated by The Cleveland-Cliffs Iron Company (Manager), violated Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*; and the Part 21 administrative rules promulgated pursuant to Part 31 of the NREPA, Wastewater Discharge Permits, Mich Admin Code, R 323.2101 *et seq.*, as amended. The DEQ further alleges Empire violated NPDES Permit No. MI0000094 (NPDES Permit). Empire is a person, as defined by Section 301 of the NREPA, MCL 324.301, and is registered with the Michigan Department of Licensing and Regulatory Affairs (DLARA) as able to conduct business in the State of Michigan under identification number 235720. Empire and the DEQ agree to resolve the alleged violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

Empire and the DEQ stipulate as follows:

- 1.1 The NREPA is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31, Water Resources Protection, of the NREPA (Part 31) and the rules promulgated pursuant thereto provide for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA, MCL 324.3112(4), to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of a specific part. The director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.4 Empire consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. Empire agrees not to contest the issuance of this Consent Order and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.5 Empire and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Empire that the law has been violated.
- 1.6 The signatory to this Consent Order certifies that it is fully authorized by Empire to enter into the terms and conditions of this Consent Order and to execute and legally bind Empire to this document. Empire hereby agrees to comply with the requirements of this Consent Order to resolve the violations stated in Section II of this Consent Order and agrees to achieve compliance with Part 31 and the NPDES Permit.

II. FINDINGS

- 2.1 Empire owns and, through its Manager, operates the Empire Mine located at Empire Mine Road, Palmer, Michigan, Marquette County. Empire is authorized to discharge wastewater to Green Creek (through Outfall 001), Schweitzer Reservoir (Outfall 002), and Goose Lake Inlet (Outfall 003) in accordance with terms and conditions, including effluent limitations, established by the NPDES Permit issued to Empire on November 30, 2011 and effective on December 1, 2011.

- 2.2 The Michigan Department of Health and Human Services (MDHHS), formally known as Michigan Department of Community Health (MDCH), issued a selenium-related public health advisory for fish consumption of brook trout and suckers in Green Creek. The advisory, published in the 2015 Michigan's Eat Safe Fish Guide, recommends limiting fish consumption of brook trout and suckers in Green Creek to four servings per month.¹ MDCH initially added Green Creek to the Michigan Fish Advisory list for selenium in 2011.
- 2.3 The State of Michigan's 5 ug/l water quality standard for selenium is established to protect fish from elevated levels of selenium which have been associated with teratogenic defects in exposed fish populations.²
- 2.4 From February to May, 2014, Empire self-reported four exceedances of the monthly maximum effluent limits for Total Selenium at Outfall 001 in the Empire's NPDES Permit via monthly Discharge Monitoring Reports. See table below. In a letter dated May 19, 2014, Empire submitted written notification to DEQ outlining initial actions taken to reduce the recurrence of the effluent exceedances.
- 2.5 From January to June, 2015, Empire self-reported six additional exceedances of the monthly maximum effluent limits for Total Selenium at Outfall 001 in Empire's NPDES Permit via monthly Discharge Monitoring Reports. See table below. In a letter dated February 11, 2015, Empire submitted written notification to DEQ outlining further actions taken to reduce the recurrence of the effluent exceedances.

DATE	Feb. 2014	Mar. 2014	Apr. 2014	May 2014	Jan. 2015	Feb. 2015	Mar. 2015	Apr. 2015	May 2015	Jun. 2015
Total Selenium Permit Limit	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l	5.0 ug/l
Total Selenium Reported	5.4 ug/l	6.3 ug/l	7.3 ug/l	5.5 ug/l	5.9 ug/l	6.3 ug/l	8.2 ug/l	6.9 ug/l	5.9 ug/l	5.3 ug/l

¹ Michigan Department Health and Human Services (MDHHS), Eat Safe Fish Guide, 2015

² Lemly, Teratogenic effects of selenium in natural populations of freshwater fish, Ecotoxicology and Environmental Safety, 1993

- 2.6 On May 18, 2015, the DEQ issued Violation Notice VN No. VN-006060 (VN), citing the violations of the NPDES Permit effluent limit and the associated discharges for Monthly Total Selenium at Outfall 001 from February to May, 2014 and from January to June, 2015. Empire submitted a response letter to DEQ dated June 15, 2015 outlining the future actions planned to mitigate the recurrence of the apparently seasonal effluent exceedances. DEQ has reviewed the actions planned, acknowledges the system identified for installation was completed as of December 15, 2015, and no seasonal exceedances recurred in 2016 through the date of entering this Consent Order.
- 2.7 On January 7, 2016, the DEQ sent Empire Enforcement Notice No. EN-000013 notifying it that it was in violation of Part 31 of its NPDES Permit.

III. EXTENSIONS

- 3.1 Empire and the DEQ agree that the DEQ may grant Empire a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the Upper Peninsula District Supervisor, WRD, DEQ, 1504 West Washington Street, Marquette, Michigan 49855, no later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
 - b. A detailed description of the circumstances that will prevent Empire from meeting the deadline(s).
 - c. A description of the measures Empire has taken and/or intends to take to meet the required deadline.
 - d. The length of the extension requested and the specific date on which the obligation will be met.

The Upper Peninsula District Supervisor or a designee, in consultation with the

Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

IV. REPORTING

- 4.1 Empire shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Upper Peninsula District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). Empire shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

V. PENALTIES

- 5.1 Within 30 days after the effective date of this Consent Order, Empire shall pay to the State of Michigan **\$1,350** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made in accordance with paragraph 5.4.
- 5.2 Empire shall also pay to the State of Michigan a civil fine of **\$95,000** for the violations specified in Section II of this Consent Order with Empire paying \$47,500 within 60 days after the effective date of this Consent Order and Empire paying the remaining \$47,500 by December 31, 2016. Payments shall be made in accordance with paragraph 5.4.
- 5.3 For each failure to comply with any provision of this Consent Order, Empire shall pay a stipulated penalty of **\$5,000**. Empire shall pay all stipulated penalties within 30 days after receipt of an invoice from the DEQ. Payments shall be made accordance with paragraph 5.4.

- 5.4 Empire agrees to pay all funds due pursuant to this Consent Order by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40117**.
- 5.5 Empire agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 5.1, and 5.2, above. Empire further agrees not to contest the legality of any stipulated penalties assessed pursuant to paragraphs 5.3, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties is made.
- 5.6 The DEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Consent Order. Subject to the other provisions of this Section V, the DEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

VI. GENERAL PROVISIONS

- 6.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any remedies to which it is entitled for any failure on the part of Empire to comply with the requirements of the NREPA and its rules.
- 6.2 The DEQ and Empire consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31 of the NREPA.

- 6.3 This Consent Order in no way affects Empire's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 6.4 The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 6.5 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Consent Order prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
- 6.6 Nothing in this Consent Order is or shall be considered to affect any liability Empire may have for natural resource damages caused by Empire's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 6.7 In the event Empire sells or transfers the Facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Empire shall also notify the WRD Upper Peninsula District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD Upper Peninsula District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 6.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.

- 6.9 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.
- 6.10 The effective date of this Consent Order is the date it is signed by the WRD Chief.

VII. TERMINATION

- 7.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Empire shall submit a request consisting of a written certification that Empire has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. A suggested form for providing the required written certification is appended as Administrative Consent Order Termination Request. Specifically, an acceptable certification shall include:
- a. Submit proof of payment in accordance with Section V.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

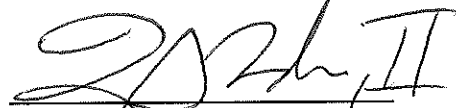
DEPARTMENT OF ENVIRONMENTAL QUALITY



Peter Ostlund, Acting Chief
Water Resources Division

5/19/2016
Date

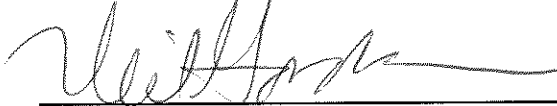
RESPONSIBLE PARTY



By: Terry G. Fedor II
Title: President, The Cleveland-Cliffs Iron Company,
as Managing Agent for,
Empire Iron Mining Partnership

5/11/16
Date

APPROVED AS TO FORM:



By: Neil Gordon, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

5/16/16
Date